

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERSEY MIKE'S FRANCHISE SYSTEMS,
INC.,

Plaintiff,

Case No.: 23-CV-03444-GC-TJB

v.

AMERICAN ARBITRATION
ASSOCIATION, INC., OPHELIA
AUGUSTINE, and CECELIA LAHR,

Defendants.

DECLARATION OF SCOTT SCHERER

1. My name is Scott Scherer. I am the Chief Information Officer ("CIO") of Plaintiff Jersey Mike's Franchise Systems, Inc. ("Plaintiff").

2. I have personal knowledge of the facts set forth herein, and if called as a witness, I would testify thereto.

3. As CIO, I oversee and manage Plaintiff's website, <http://www.jerseymikes.com>.

4. I manage the website from New Jersey, and physical servers for the website are located in New Jersey.

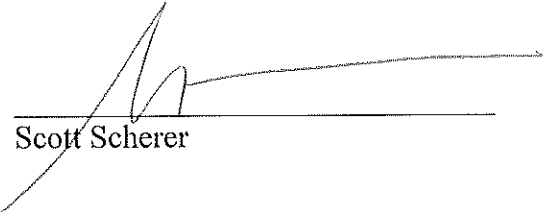
5. Every webpage on Plaintiff's website has a link to the "Terms of Use," which is Plaintiff's contract with users of Plaintiff's website that governs access to and use of the website.

6. As of June 26, 2023, Plaintiff amended the Terms of Use. See <https://www.jerseymikes.com/terms-of-use> ("Last Updated: 06/26/2023").

7. A true and correct copy of the previous version of the Terms of Use, which was in effect through June 25, 2023, is attached hereto as **Exhibit A**.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 21, 2023
Manassas, New Jersey



Scott Scherer

EXHIBIT A



Terms of Use

Last Updated: 02/05/2018

Your access to and the use of Jersey Mike's website is subject to the following terms and conditions, "Terms", as well as all applicable laws. In consideration for making our website available to you, you agree to comply by these Terms, whether or not you are a registered user.

However for those who register for communications by text or e-mail, or who register for online accounts, or provide information to order food, gift cards, or merchandise as a guest ("Registered Users") these terms also include an agreement to resolve all disputes only one-on-one, in **arbitration** (no court trial, no jury trial, no class actions).

There are sections of Jersey Mike's website that may connect you to other sites outside of the control of Jersey Mike's website. These Terms apply ONLY to web pages that are part of Jersey Mike's website.

Registration

Certain portions of Jersey Mike's website are limited to registered users, and/or may allow a user to request support/services online by entering personal information. When users register with our website or purchase something from us, they will be provided a link to these Terms and asked to agree to comply with them. When you provide us with information, you agree that any personal information provided to us is complete and accurate. Also, you agree not to register under the name of, nor attempt to enter the website under the name of, another person, and you will not adopt a user name that Jersey Mike's, in its sole discretion, deems offensive. Please note that any personally identifiable information that you provide to us will be subject to, and protected under, our Privacy Policy. Please read our **privacy policy** at **www.jerseymikes.com/privacy-policy**

Your Account

If you use the Jersey Mike's website, you are responsible for taking reasonable steps to maintain the confidentiality of your account and password and to restrict access to your computer. To the fullest extent allowed by law, you agree to accept responsibility for all activities that occur under your Jersey Mike's account or password. If you believe that another person has accessed or used your Jersey Mike's account, you agree to notify us right away. The Jersey Mike's website sells products to adults, who can purchase with a credit card.

If You Are Under 18 Years of Age

If you are under 18, only use the Jersey Mike's website with involvement of a parent or guardian. Jersey Mike's and its affiliates reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion. If you have already paid for any cancelled order, you will be reimbursed.

If You Are Under 13 Years of Age

IF YOU ARE UNDER 13 YEARS OF AGE, THEN PLEASE DO NOT USE THE JERSEY MIKE'S WEBSITE - there are lots of other great websites for you. Talk to your parents about what sites are appropriate for you.

Access to the Jersey Mike's website

Jersey Mike's hereby grants you permission to use the website as set forth in these Terms, provided that: (i) your use of the website as permitted is solely for your personal, noncommercial use; (ii) you will not copy or distribute any part of the website in any medium without Jersey Mike's prior written authorization; (iii) you will not alter or modify any part of the website other than as may be reasonably necessary to use the website for its intended purpose; and (iv) you will otherwise comply with the terms and conditions of these Terms of Use.

You agree not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that accesses the website in a manner that sends more request messages to the Jersey Mike's servers in a given period of time than a human can reasonably produce in the same period by using a convention on-line web browser. You agree not to collect or harvest any personally identifiable information for purposes of any commercial solicitation, including account names, from the website, nor to use the communication systems provided by the website for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the website with respect to their User Submissions.

Conduct

You agree to access and use Jersey Mike's website for lawful purposes, ONLY. By accessing Jersey Mike's website, you agree that you will NOT knowingly, recklessly, or negligently:

- Use The Jersey Mike's website to commit a criminal offense, or to encourage others to conduct acts that would constitute a criminal offense or give rise to civil liability;
- Post (or transmit) any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane, or otherwise objectionable content;
- Use the website to impersonate other parties or entities;
- Use the website to upload any content that contains a software virus, such as a Trojan Horse or any other computer codes, files, or programs that may alter, damage, or interrupt the daily function of the website (or the hardware/software of any other person who may access the website);
- Upload, post, e-mail, or otherwise transmit any materials, that you do not have the right to transmit under any law (or under any contractual relationship);
- Alter, damage, or delete any content posted on the website;
- Disrupt the website's normal functionality in any way;



- Claim a relationship with or speak for Jersey Mike's or any of its franchisees or affiliates;
- Post or transmit any unsolicited advertising, promotional materials, or other forms of solicitation;
- Post any material that infringes (or violates) the intellectual rights of others; or
- Collect (or store) personal information about others.

Termination of Use

Jersey Mike's may (in its sole discretion) suspend/terminate your access to or use of Jersey Mike's website without notification for any violation of these Terms, or for other conduct that Jersey Mike's deems is harmful/unlawful to others. Note: In the event of termination, you are no longer authorized to access Jersey Mike's website.

Other Site Links

There may be links on Jersey Mike's website that lead to websites not maintained/operated by Jersey Mike's ("Links"). Jersey Mike's does not control the websites referenced by these Links, nor do we review the content of those websites. Jersey Mike's provides these outside Links to users for their convenience. The listing of Links is not an endorsement of information, products, or services, and does not imply a direct association between Jersey Mike's and the operators of the Links.

Policy on Spamming

You specifically agree NOT to utilize e-mail addresses obtained by browsing through Jersey Mike's website to transmit the same or substantially similar unsolicited message to 10 or more recipients in a single day. Also, you agree NOT to transmit the same or substantially similar unsolicited message to 20 or more recipients in a single week (seven consecutive days), unless it is required for legitimate business purposes. Note: Jersey Mike's (in its sole and exclusive discretion) will determine violations of limitations on e-mail usage set forth in these Terms.

Content

Jersey Mike's has the right to monitor any content that you post to the Jersey Mike's website, or that you send through the website. We reserve the right to delete, move, and/or edit any postings that come to our attention, which we consider to be unacceptable or inappropriate whether for legal or other reasons. Note: The United States and foreign copyright laws, as well as international conventions, protect the contents of Jersey Mike's website. (You have agreed to abide by all copyright notices by entering and using Jersey Mike's website

www.jerseymikes.com)



Indemnity

You agree to defend, indemnify, and hold harmless Jersey Mike's (and its owner/operators and employees) from any and all liabilities and costs incurred by us or our employees in connection with any claim arising from any breach by you of these Terms, including reasonable attorney's fees and costs. You agree to cooperate as fully as may be reasonably possible in the defense of any such claim. Jersey Mike's reserves the right to assume, at its own expense, the exclusive defense and control of any matter otherwise subject to indemnification by you. You in turn shall not settle any matter without the written consent of Jersey Mike's. The terms of this duty

to defend, indemnity, and hold harmless are subject to any defense you may have as a matter of law. This duty does not include any liabilities or costs which arise as a result of intentional wrongdoing, recklessness, or negligence on the part of the indemnified parties.

Website Provided Voluntarily

Jersey Mike's provides this website at no charge to you. Jersey Mike's can choose to discontinue or change the content and function of this website at any time. You agree not to rely on Jersey Mike's to continue to provide the website, in this form or at all. Changes to the website will not affect the economic terms of any pending transaction.

Acceptance of Service

The website is controlled and offered by Jersey Mike's from its facilities in the United States of America. Jersey Mike's makes no representations that the Jersey Mike's website is appropriate or available for use in other locations. Those who access or use the Jersey Mike's website from other jurisdictions do so at their own volition and are responsible for compliance with the laws of their home jurisdictions.

Modification of Terms of Use

Jersey Mike's reserves the right to modify or supplement these Terms at any time. If we make any material changes to these Terms, we will post a notice about the change at a prominent location on our web site. If you are a member of our Email Club, we will email you a notice of such changes. If you continue to use the website after reasonable notice of these changes, you accept the modifications to the Terms.

General

These Terms shall be governed by the laws of the State of New Jersey, without respect to its conflict of laws principles. Any claim or dispute between you and Jersey Mike's that arises in whole or in part from the Jersey Mike's website shall be decided exclusively by a court of competent jurisdiction located in Monmouth County, New Jersey, unless subject to the Mandatory Dispute Resolution terms for Registered Users below. These Terms, together with the Jersey Mike's website Privacy Notice and any other notices published by Jersey Mike's on the website, shall constitute the entire agreement between you and Jersey Mike's concerning the website. However, this is not to the exclusion of any notice to which you are entitled as a matter of law. If any provision of these Terms of Use is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect. No waiver of a term of these Terms of Use shall be deemed a further or continuing waiver of such term, or any other term, and the failure by Jersey Mike's to assert any right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

Mandatory Dispute Resolution for Registered Users (Individual Arbitration; No Court Trial; No Jury; No Class Action)

Claims

Any legal or equitable dispute between you and JMFS and/or its franchisees (“we” or “us”) relating in any way to this Website is a “Claim”. For example, Claims can arise under federal or state law. Claims can assert violations of statute, breach of contract, torts, frauds, or misrepresentations. Those are just examples. Any dispute which could form the basis of a legal Complaint in a courtroom is a Claim.

Excepted Claims

Individual claims that can be brought and completely resolved in small claims court and/or claims related to the ownership of JMFS intellectual property are “Excepted Claims”.

Covered Claims

All Claims, other than Excepted Claims, are Covered Claims.

AAA as Arbitrator

You and we agree to mandatory, binding arbitration of Covered Claims by the American Arbitration Association (“AAA”). More information about AAA can be found at <https://www.adr.org/Arbitration>.

Any arbitration must be filed with AAA at <https://www.adr.org/Support> or by such means as AAA shall make available. All issues are for AAA to decide, except that disputes relating to the scope, application, and enforceability of these Mandatory Dispute Resolution Terms are for a Court to decide (if you and we cannot agree).

Related Court Proceedings

You and we agree to be subject to the personal jurisdiction of the courts of New Jersey with respect to any Covered Claim. You and we submit to the jurisdiction of the federal and State Courts surrounding Monmouth County, New Jersey to (1) enforce the terms of this Mandatory Dispute Resolution Agreement, (2) to address disputes regarding the scope, application, and enforceability of these Mandatory Dispute Resolution Terms, (3) for the appointment of a substitute arbitrator as needed (see below), and (4) to enter any award rendered by the arbitrator.

Rules to Apply

AAA will adjudicate the Covered Claims in accordance with its Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes.

No Class Actions

You and we agree not to bring or participate in any class action regarding a Claim. You and we agree that AAA only has authorization to conduct arbitration of Covered Claims on an individual basis. You and we do not give AAA permission to arbitrate Your claim in conjunction with any Claim asserted by anyone else.

Substitute Arbitrator

In the event that AAA cannot or will not perform arbitration in accordance with the provisions of this agreement, either (a) the parties may agree to another arbitrator or, if no such agreement is had, (b) a court shall appoint one according to the provisions of the Federal Arbitration Act, 9 U.S. Code § 5.

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